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No. 85-1042

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

MARINE TRANSPORT LINES, INC.,
Petitioner,

v.

THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, etc.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

ADDITIONAL REASONS FOR GRANTING THE WRIT

In its Brief in Opposition in this matter, Respondent, The International Organization of Masters, Mates & Pilots ("the MM&P") seeks to trivialize the issues raised by this case by denying that the Eleventh Circuit's decision interpreted the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.* (1977), so as to limit the inherent power of the federal courts to issue injunctions in aid of their jurisdiction. MM&P also suggests that the issue before this Court may be moot because Marine Transport Lines,

Inc. ("MTL") has likely paid most, if not all, of the unpaid wages. Brief in Opposition at p. 16. Petitioner suggests that neither of these arguments should distract this Court from the real and continuing conflict between the inherent power of the federal courts and the limitations on jurisdiction contained in the Norris-LaGuardia Act.

I. The Eleventh Circuit's Decision Interprets The Norris-LaGuardia Act So As To Limit The Inherent Power Of The Federal Courts To Issue Injunctions In Aid Of Their Jurisdiction.

The Eleventh Circuit undeniably held that the injunction issued by the district court below had to be vacated because the district court failed to make findings of "unlawful conduct" as required by Section 7(a) of the Norris-LaGuardia Act, 29 U.S.C. § 107(a). The Court of Appeals' holding, however, necessarily subsumed a determination that the Norris-LaGuardia Act places a limitation on the inherent power of the federal courts to act in aid of their jurisdiction. The district court was presented with evidence, and specifically found, that the MM&P precipitated the filing of two arrest actions against MTL. *See* Appendix at p. 9a ("Defendant has filed wage penalty suits resulting in the arrest of two of Plaintiff's ships . . . .")[1] Moreover, the district court found that there was "no utility" in allowing the MM&P to file additional lawsuits in other courts, given that the district court could provide the MM&P complete relief and that the filing of additional actions would have resulted in irreparable injury to Petitioner's business. *Id.* at 11a. In short, the injunction issued by the district court was at least implicitly designed to control that court's docket and prevent abuse of the judicial system.

In this context, the Eleventh Circuit's focus on the absence of a finding of unlawful conduct as required by

[1] All citations to the "Appendix" refer to the Appendix contained in MTL's Petition for a Writ of Certiorari.

Section 7(a) of the Norris-LaGuardia Act imposes a restriction on the power of the federal courts which is unreasonable and leaves the federal courts powerless to control their dockets in any action involving a labor dispute. In effect, the Eleventh Circuit's decision requires a district court to find "violence, intimidation, threats, vandalism, breaches of the peace or criminal acts" prior to issuing an injunction that does nothing more than provide the court with an opportunity to perform efficiently its judicial function. *See United States v. United Mine Workers of America*, 330 U.S. 258, 309 (1947) (Frankfurter, J., concurring). Viewed in this light, it is clear that the case presents the question of whether a proper accommodation of the Norris-LaGuardia Act and the inherent power of the federal courts requires a relaxation of the provisions of Section 7 of the Norris-LaGuardia Act.

There is substantial precedent indicating that the requirements in Section 7 can be relaxed as part of the accommodation between the Norris-LaGuardia Act and another federal statute. For example, in *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), this Court found that the conflicting policies of various labor statutes required accommodation to one another. After performing this process of accommodation, this Court permitted the issuance of an injunction to enforce a no-strike clause in a collective bargaining agreement. Obviously, a strike in violation of a collective bargaining agreement is not "unlawful conduct" within the meaning of Section 7 of the Norris-LaGuardia Act and, yet, this Court allowed injunctive relief to be granted. In short, this Court implicitly recognized that the process of accommodation between the Norris-LaGuardia Act and Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1977), required a relaxation of some of the requirements in Section 7 of the Norris-LaGuardia Act.

Similarly, in *Local 553, Transport Workers Union v. Eastern Air Lines*, 695 F.2d 668 (2d Cir. 1982), the Second Circuit recognized that the accommodation of the Norris-LaGuardia Act and the Railway Labor Act required the relaxation of certain of the requirements in Section 7 of the Norris-LaGuardia Act. In that case, the Second Circuit approved a district court injunction which prohibited the employer from assigning nonunion flight attendants to work on certain newly acquired routes in South America. The district court enjoined the assignment of routes to nonunion employees on the theory that the assignments created a "major dispute" under the Railway Labor Act. On appeal, the employer argued that the injunction did not comply with the Norris-LaGuardia Act because the district court failed to find that "as to each item of relief granted greater injury will be inflicted upon the complainant by the denial of relief than will be inflicted upon defendants by the granting of relief." *Id.* at 687 (quoting 29 U.S.C. § 107(c)). In rejecting this argument, the Second Circuit stated:

> We agree with the District Court that Section 7(c) should not apply to injunctions designed to preserve the status quo during major disputes. In a major dispute, the status quo provisions are 'central to the RLA's design.' The RLA sets up an elaborate procedure designed to induce both parties to a labor dispute to resolve their differences peacefully and voluntarily. Only if both sides are required to maintain the status quo during the pendency of these procedures can the machinery provided in the Act promote the labor peace that the framers desired. It is for this reason that courts have considered the status quo obligations imposed by the RLA to be 'mandatory.' Applying the equitable considerations of Section 7(c) of the Norris-LaGuardia Act in this case would be inconsistent with the mandatory maintenance of the status quo during major disputes that the RLA requires.

Id. at 678-79 (footnotes and citations omitted).

In short, the Eleventh Circuit's strict application of the requirements in Section 7 of the Norris-LaGuardia Act necessarily raises the question of how the inherent power of the federal courts to issue injunctions in aid of their jurisdiction should be accommodated to the limitations on jurisdiction contained in the Norris-LaGuardia Act.

II. The Dispute Underlying This Litigation Is Not Moot.

With respect to the issue of mootness, the MMP's contention is untenable and contrary to the recent findings of the district court in *Stuart v. Steamship M/V Marie Duval*, No. 84-1136-Civ-T-17 (M.D. Fla. March 6, 1986). Supplemental Appendix, p. SA-1. *Stuart* v. *Steamship M/V Marie Duval* is one of the arrest actions against an MTL vessel precipitated by the MM&P. In that action, the district court recently heard and decided MTL's motion for summary judgment. The district court denied that motion as to count I of the complaint. The denial of the motion with respect to count I was based on the court's finding that there is a factual dispute as to whether MTL has paid all of the wages due MM&P members. As such, Respondent's contention of mootness is unfounded.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that a Writ of Certiorari be issued to review the judgment of the Court of Appeals for the Eleventh Circuit in this case.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO. 84-1136-CIV-T-17

JOHN M. STUART, *et al.*,
Plaintiff(s),

VS.

STEAMSHIP M/V DUVAL, *etc.*, *et al.*,
Defendant(s).

ORDER ON MOTIONS FOR SUMMARY JUDGMENT AND TO DISMISS

THIS CAUSE is before the Court on Defendants' motion to dismiss, filed August 27, 1984, thereafter supplemented October 2, 1985, and interpreted as a motion for summary judgment. Also pending is Defendants' motion for summary judgment, filed September 3, 1985. Plaintiffs' opposition to these motions was received January 3, 1986. Oral argument was held January 30, 1986.

Defendants seek to dismiss Count II of the Complaint regarding Plaintiffs' claim for penalty wages pursuant to 42 U.S.C. §§ 10313 and 10504. Defendants maintain that Plaintiff has presented insufficient allegations to support a penalty payment pursuant to the above cited Code sections. Furthermore, Defendants maintain that the monies demanded in the complaint are for deferred wages and benefits, which were retroactively reinstated, and said deferred wages and benefits do not fall within the meaning and intent of 42 U.S.C. § 10313 and § 10504. Furthermore, Defendants posit that 42 U.S.C. § 10504's

exemption for coastwide commerce retroactively precludes this claim.

Defendants also seek summary judgment as to Count I of the complaint claiming that all amounts sought in a complaint have been paid. Material issues of fact as to whether Plaintiffs have been paid all the wages due them, precludes summary judgment.

The wages claimed do not fall within the penalty statute 46 U.S.C. § 10504, since the retroactive applicability of this statute exempts this coastwide voyage from penalty wage claims regarding § 10504. Count II, must be dismissed. Accordingly, it is

ORDERED that the Defendants' motion to dismiss/summary judgment regarding Count II claims pursuant to § 10504 is granted. The Defendants' motion for summary judgment regarding Count I is denied. This Order is *not* to be construed as one pursuant to Fed.R.Civ.P. 54(b).

DONE AND ORDERED in Chambers, in Tampa, Florida, this — day of March, 1986.

ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to:

All Parties and Counsel of Record